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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 510

W. T. GRANT COMPANY, a Corporation, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

EUGENE M. FOLEY,
Attorney for Petitioner.

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Argument

The Board makes three points in its brief which require comment.

I.

The Board's conception of the questions involved in this proceeding is based on the unwarranted assumption that the Union's majority status was clearly established and that the petitioner had knowledge of the fact. The Board admits, however, that the Union did not represent a majority when it made its only request for a bargaining

conference but, by adding when the request was "mailed to the employer" it indulges in hairsplitting. For there is no evidence at all that the three authorization cards, signed on January 6, 1950 (R. 80, 81 and 82) which gave the Union a putative majority, were signed before the delivery of the request in the morning mail of January 6, 1950.

II.

To narrow the issue before this court, petitioner has conceded that it violated Section 8(a)(1) of the National Labor Relations Act. The Board, however, continues to dwell on that phase of the proceeding though it is not in issue.* For what purpose? It goes without saying that the employer's violation of Section 8(a)(1) did not strip the employees of their right to make a free choice. Obviously, petitioner did not and could not do anything which would stamp, as pro-union, any of the employees who did not desire union representation.

III.

In a footnote on page 6 of the Board's brief it is said that the petitioner's unilateral grant of benefits, held to be a violation of Section 8(a)(5) "even without regard to

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* In claiming that the employer undermined the union, the Board closes its eyes to the conduct of Victor J. Lazzaro, the Union's business agent (R. 114) in turning over "curtains and things" (R. 166), "roughing up of Department 11, which is men's and boy's clothes" (R. 164), "picking up pieces of material and stringing it out over the counter" (R. 168, 184), and urging a customer not to buy in petitioner's store (R. 184). The Union subsequently withdrew its petition. Petitioner suggests that the Board would have stood on firmer ground had it concluded that in the employees' eyes the Union's prestige collapsed under Lazzaro's invasion of petitioner's store, that it was obvious, to the Union, that it could not prevail at an election and thus withdrew its petition.

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petitioner's motive, is not contested here." In this the Board is mistaken. The petitioner contends that this Union was not the true representative of the employees and, that being so, the question whether petitioner was or was not required to bargain with the Union, before granting merit wage increases (and changing the work week of thirteen employees from a six day—40 hour week to a five day—40 hour week) in order to meet competition, is academic.

Respectfully submitted,

EUGENE M. FOLEY,
Attorney for Petitioner.

January 21, 1953.